

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**ELIZABETH ESTEY, individually and on
behalf of all others similarly situated,**

Plaintiff,

-v.-

**MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, CAROL T. CHRIST,
ARMANDO M. CODINA, VIRGIS W.
COLBERT, JILL K. CONWAY, ALBERTO
CRIBIORE, JOHN D. FINNEGAN, JUDITH
MAYHEW JONAS, DAVID K.
NEWBIGGERING, AULANA L. PETERS,
JOSEPH W. PRUEHER, ANN N. REESE,
CHARLES O. ROSSOTTI, LOUIS
DIMARIA, PETER STINGI and JOHN
AND JANE DOES 1-20,**

Civil Action No.: 07-CV-10268 (DC)

Defendants.

[additional captions follow]

**PLAINTIFFS GIDARO AND DONLON'S JOINT AMENDED MOTION
FOR ENTRY OF [PROPOSED] PRETRIAL ORDER NO. 1
CONSOLIDATING THE ERISA ACTIONS AND
APPOINTING INTERIM LEAD PLAINTIFF AND INTERIM CO-LEAD COUNSEL**

**MARY GIDARO, individually and on behalf
of all others similarly situated,**

Plaintiff,

-v.-

**MERRILL LYNCH & CO., INC.; STAN
O'NEAL; LOU DIMARIA; INVESTMENT
COMMITTEE OF THE MERRILL LYNCH
SAVINGS AND INVESTMENT PLAN;
ADMINISTRATIVE COMMITTEE OF
THE MERRILL LYNCH SAVINGS AND
INVESTMENT PLAN and JOHN DOES 1-
30,**

Defendants.

Civil Action No.: 07-CV-10273 (LBS)

**CHRISTINE DONLON, on Behalf of All
Others Similarly Situated,**

Plaintiff,

-v.-

**MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, CAROL T. CHRIST,
ARMANDO M. CODINA, VIRGIS W.
COLBERT, JILL K. CONWAY, ALBERTO
CRIBIORE, LOUIS DIMARIA , JOHN D.
FINNEGAN, JUDITH MAYHEW JONAS,
AULANA L. PETERS, JOSEPH W.
PRUEHER, ANN N. REESE, CHARLES O.
ROSSOTTI, JOHN DOES 1-20 (BEING
CURRENT AND FORMER MEMBERS OF
THE BENEFITS ADMINISTRATION
COMMITTEE OF THE MERRILL LYNCH
& CO., INC. EMPLOYEE STOCK
OWNERSHIP PLAN) and JOHN DOES 21-
40 (BEING CURRENT AND FORMER
MEMBERS OF THE INVESTMENT
COMMITTEE OF THE MERRILL LYNCH
& CO., INC. EMPLOYEE STOCK
OWNERSHIP PLAN),**

Defendants.

Civil Action No.: 07-CV-10661 (LBS)

**TARA MOORE, individually and on behalf
of all others similarly situated,**

Civil Action No.: 07-CV-10398 (DC)

Plaintiff,

-v.-

**MERRILL LYNCH & CO., INC.,
MERRILL LYNCH & CO., INC. PLAN
“INVESTMENT COMMITTEE,”
MERRILL LYNCH & CO., INC. PLAN
ADMINISTRATIVE COMMITTEE,
MERRILL LYNCH & CO., INC.
MANAGEMENT DEVELOPMENT AND
COMPENSATION COMMITTEE, LOUIS
DIMARIA, E. STANLEY O’NEAL,
ALBERTO CRIBIORE, ARMANDO M.
CODINA, VIRGIS W. COLBERT, JOHN D.
FINNEGAN, AULANA L. PETERS and
JOHN DOES 1-10,**

Defendants.

GREGORY YASHGUR, individually and on behalf of all others similarly situated,

Plaintiff,

-v.-

**MERRILL LYNCH & CO., INC.,
ADMINISTRATIVE COMMITTEE OF
THE MERRILL LYNCH & CO., INC. 401K
SAVINGS AND INVESTMENT PLAN,
JOHN D. FINNEGAN, JUDITH JONAS
MAYHEW, AULANA L. PETERS, JOSEPH
W. PRUEHER, ANN N. REESE, CHARLES
O. ROSSITTI, LOUIS DIMARIA, STAN
O'NEAL, ALBERTO CRIBIORE, CAROL
T. CHRIST, ARMANDO M. CODINA,
VIRGIS W. COLBERT and JOHN DOES,**

Defendants.

CARL ESPOSITO, individually and on behalf of all others similarly situated,

Plaintiff,

-v.-

**MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, CAROL T. CHRIST,
ARMANDO M. CODINA, VIRGIS W.
COLBERT, JILL K. CONWAY, ALBERTO
CRIBIORE, JOHN D. FINNEGAN, JUDITH
MAYHEW JONAS, DAVID K.
NEWBIGGING, AULANA L. PETERS,
JOSEPH W. PRUEHER, ANN N. REESE,
CHARLES O. ROSSOTTI, LOUIS
DIMARIA, PETER STINGI and JOHN
AND JANE DOES 1-20,**

Defendants.

Civil Action No.: 07-CV-10569 (JSR)

Civil Action No.: 07-CV-10687 (JGK)

**SEAN SHAUGHNESSEY, individually and
on behalf of all others similarly situated,**

Plaintiff,

-v.-

**MERRILL LYNCH & CO., INC.,
MERRILL LYNCH & CO., INC.
INVESTMENT COMMITTEE,
MANAGEMENT DEVELOPMENT AND
COMPENSATION COMMITTEE OF THE
MERRILL LYNCH & CO., INC. BOARD
OF DIRECTORS, THE MERRILL LYNCH
TRUST COMPANY, FSB,
ADMINISTRATIVE COMMITTEE OF
THE MERRILL LUNCH & CO., INC. 401K
SAVINGS AND INVESTMENT PLAN,
LOUIS DIMARIA, ARMANDO M.
CODINA, VIRGIS W. COLBERT,
ALBERTO CRIBIORE, JOHN D.
FINNEGAN, AULANA L. PETERS and
JOHN DOES 1-40,**

Defendants.

Civil Action No.: 07-CV-10710 (GEL)

BARBARA BOLAND, individually and on behalf of all others similarly situated,

Plaintiff,

-v.-

**MERRILL LYNCH & CO., INC., E.
STANLEY O'NEAL, CAROL T. CHRIST,
ARMANDO M. CODINA, VIRGIS W.
COLBERT, JILL K. CONWAY, ALBERTO
CRIBIORE, JOHN D. FINNEGAN, JUDITH
MAYHEW JONAS, DAVID K.
NEWBIGGING, AULANA L. PETERS,
JOSEPH W. PRUEHER, ANN N. REESE,
CHARLES O. ROSSOTTI and JOHN AND
JANE DOES 1-20,**

Defendants.

Civil Action No.: 07-CV-11054 (MGC)

FRANCIS LEE SUMMERS, III, individually and on behalf of all others similarly situated,

Plaintiff,

-v.-

MERRILL LYNCH & CO., INC., *ET AL.*,

Defendants.

Civil Action No.: 07-CV-11615 (UA)

JAMES EASTMAN, individually and on behalf of all others similarly situated,

Plaintiff,

-v.-

MERRILL LYNCH & CO., INC., ETAL.,

Defendants.

Civil Action No.: 08-CV-00058 (LBS)

Pursuant to Fed. R. Civ. P. 23(g) and 42(a), plaintiffs Mary Gidaro and Christine Donlon respectfully amend their earlier motions for consolidation of these actions and now jointly move this Court for entry of the [Proposed] Pretrial Order No. 1 consolidating the ERISA actions and appointing Interim Lead Plaintiff and Interim Co-Lead Counsel, and in support of their motion, aver as follows:

1. Plaintiffs in the above-referenced actions filed complaints against Merrill Lynch & Co., Inc. ("Merrill Lynch" or the "Company") and certain officers and directors of the Company, as well as other fiduciaries of the on behalf of the Merrill Lynch 401(k) Saving and Investment Plan, the Retirement Accumulation Plan and the Employee Stock Ownership Plan (the three plans treated under a single umbrella by Merrill Lynch and referred to collectively herein as the "Plan"), established as a benefit for Merrill Lynch's employees (these cases are collectively referred to herein as the "ERISA Actions"). The ERISA Actions were filed on behalf of the plaintiffs individually and a class of all persons who were participants in or beneficiaries of the Plan during a defined period. Plaintiffs are not aware of any other ERISA actions, other than those above-captioned, arising out of the same operative facts pending in this or any other judicial district.

2. In their complaints, plaintiffs allege that defendants breached their fiduciary duties to plaintiffs and members of the class in connection with the Plan's investment in Merrill Lynch stock, including, *inter alia*, by failing to monitor properly Merrill Lynch stock as a Plan retirement investment alternative and failing to advise plaintiffs and members of the class that Merrill Lynch stock was an imprudent retirement investment alternative, due to Merrill Lynch's high-risk business practices and massive exposure to the subprime mortgage market, including certain collateralized debt obligations ("CDOs"), as well as other structured credit products and components of the leveraged finance origination market.

3. The ERISA Actions seek relief pursuant to Sections 409 and 502(a)(2) and (3) of the Employee Retirement Income Security Act, 29 U.S.C. §§ 409 and 1132(a)(2) and (3), on the behalf of the Plan, alleging, *inter alia*, that defendants are responsible for restoring losses sustained by the Plan as a result of defendants' breaches of their fiduciary duties.

4. Because the ERISA Actions contain similar allegations and seek the same relief on behalf of an identical class (i.e., participants in the Plan), it is appropriate, in accordance with the *Manual for Complex Litigation, Fourth Edition* (2004) (the "Manual"), for the Court to enter an Order setting forth procedures for the efficient management of these cases, and appointing a leadership structure of Interim Lead Plaintiffs and Interim Co-Lead Counsel.

5. In accordance with the recommendations of the *Manual*, Plaintiffs Gidaro and Donlon submit for the Court's consideration a proposed form of Pretrial Order No. 1 which provides for: (1) the consolidation of the above-captioned actions and actions subsequently filed in or transferred to this District; (2) the designation of a Master File Docket number; (3) the establishment of efficient procedures for the filing and docketing of papers with the Clerk of this Court; (4) their appointment

as Interim Lead Plaintiffs; (5) the appointment of the law firms of Shalov Stone Bonner & Rocco LLP and Harwood Feffer LLP as Interim Co-Lead Counsel; and (6) a preliminary schedule for these proceedings.

6. This Motion is based on the concurrently filed [Proposed] Pretrial Order No. 1, the accompanying Memorandum of Law and Declaration of Ralph M. Stone, and all other and prior papers and pleadings in the above-captioned actions.

Dated: New York, New York
February 11, 2008

Respectfully submitted,

SHALOV STONE BONNER & ROCCO LLP

By: /s/ Ralph M. Stone

Ralph M. Stone (rstone@lawssb.com)
Susan M. Davies (sdavies@lawssb.com)
Thomas G. Ciarlone (fciarlone@lawssb.com)
Amanda C. Scuder (ascuder@lawssb.com)

485 Seventy Avenue, Suite 1000
New York, New York 10018
(212) 239-4340
Fax (212) 239-4310

- and -

Robert I. Harwood (rharwood@hfesq.com)
Samuel K. Rosen (srosen@hfesq.com)
HARWOOD FEFFER LLP
488 Madison Avenue
New York, New York 10022
(212) 935-7400
Fax (212) 753-3630

Proposed Interim Co-Lead Counsel for Plaintiffs